



August 23, 2000

Mr. David Anderson
Chief Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2000-3225

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 138275.

The Texas Education Agency ("TEA") received a request for several categories of information relating to "the operations, management, administration, charter provisions, and financial performance of the Heritage Academy Charter School." In addition, the requestor is seeking similar information regarding the Renaissance Charter School. You claim that the submitted exhibits are excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information requested.¹

Initially, we note that some of the submitted information is public information that is not excepted from required public disclosure under the Act. We specifically refer you to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

...

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

Gov't Code § 552.022 (emphasis added). In the instant case, Exhibit 5, which contains the notation "Final Report" on the face of the document, falls within the scope of section 552.022(a)(1) as it is a completed report made for TEA, a governmental body; thus, Exhibit 5 must be released to the requestor in its entirety. With regard to the public release of the responsive information, you do not assert the applicability of any "other law" that makes the information confidential, nor do we find any provision of law that makes confidential any of the submitted information. We note that sections 552.103, 552.107, 552.111, and 552.116 of the Government Code are discretionary exceptions under the Act and thereby do not constitute "other law" that makes information confidential.² See also Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 575 at 2 (1990) (discovery privileges do not constitute "other law" that would make information confidential under the Act); 522 at 4 (1989) (discretionary exceptions in general). See also Gov't Code § 552.007(a); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475, 476 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive litigation exception, section 552.103).

As to the remaining information, section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

You inform this office that TEA "is currently involved in the investigation of the conduct of the charter school and has already taken sanctions on the charter school in the form of an

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties.

is reasonably anticipated as the next formal step for the agency to take regarding the conduct of the charter school is a contested case proceeding under section 12.116 of the Education Code and 19 Texas Administrative Code section 100.101. We conclude that litigation is reasonably anticipated. Additionally, we find that the submitted information relates to the anticipated litigation. Therefore, TEA may withhold Exhibits 2, 3, 4, and 6 under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, TEA must release Exhibit 5 to the requestor. Exhibits 2, 3, 4, and 6 may be withheld. Because sections 552.022 and 552.103 are dispositive, we do not address your other claimed exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 138275

Encl. Submitted documents

cc: Ms. Kelly Evans
Attorney at Law
P. O. Box 142534
Austin, Texas 78714-2534
(w/o enclosures)